

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

EXXON MOBIL CORPORATION,	§	
	§	
	§	
Plaintiff,	§	
	§	
v.	§	NO. 4:16-CV-469-K
	§	
ERIC TRADD SCHNEIDERMAN,	§	
Attorney General of New York, in his	§	
official capacity, and MAURA TRACY	§	
HEALEY, Attorney General of	§	
Massachusetts, in her official capacity.	§	
	§	
Defendants.	§	

**SUPPLEMENTAL APPENDIX IN FURTHER SUPPORT OF
DEFENDANT ERIC T. SCHNEIDERMAN'S MOTION TO DISMISS
EXXONMOBIL'S FIRST AMENDED COMPLAINT**

<u>Exhibit</u>	<u>Description</u>	<u>Page(s)</u>
N/A	Declaration of Tyler J. Bexley	iii
47	Transcript of a December 9, 2016, hearing before the New York Supreme Court for New York County in <i>New York v. PwC and Exxon</i> [Doc. No. 110], available at https://iapps.courts.state.ny.us/webcivil/FCASMain	593-621

Respectfully submitted,

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By his attorneys:

s/ Pete Marketos

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Dated: January 6, 2017

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on January 6, 2017, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system. Any other counsel of record will be served in accordance with the Federal Rules of Civil Procedure.

s/ Pete Marketos
Pete Marketos

DECLARATION OF TYLER J. BEXLEY

I, Tyler J. Bexley, declare as follows:

1. My name is Tyler J. Bexley. I am admitted to practice in this Court and am an associate at Reese Gordon Marketos, LLP, which is counsel-of-record for Eric T. Schneiderman, Attorney General of New York, in his official capacity, in this case. I am over 18 years of age and am fully competent in all respects to make this declaration. Based on my personal knowledge, my review of relevant documents, and my discussion with colleagues, I have knowledge of the facts stated herein, and each of them is true and correct.

2. I submit this supplemental declaration in further support of the Attorney General of New York's Motion to Dismiss Plaintiff's First Amended Complaint.

3. Attached to this declaration as Exhibit 47 is a true and accurate copy of the Transcript of a December 9, 2016 hearing before the New York Supreme Court for New York County in *New York v. PwC and Exxon* [Doc. No. 96], available at <https://iapps.courts.state.ny.us/webcivil/FCASMain>.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 6, 2017.


Tyler J. Bexley

Exhibit 47

1

1
2 SUPREME COURT OF THE STATE OF NEW YORK
3 NEW YORK COUNTY - CIVIL TERM - PART 61

4 -----X
5 In the Matter of the Application of the

6 PEOPLE OF THE STATE OF NEW YORK, by
7 ERIC T. SCHNEIDERMAN,
8 Attorney General of the State of New York,

9 PETITIONER,
10 For an order pursuant to CPLR 2308(b) to compel
11 Compliance with a subpoena issued by the Attorney
12 General

13 -against-

14 PRICE WATERHOUSE COOPERS LLP and
15 EXXON MOBIL CORPORATION,

16 RESPONDANTS
17 -----X

18 Index No. 451962/16 60 Centre Street
19 Proceedings New York, New York
20 December 9, 2016

21 B E F O R E:

22 HONORABLE BARRY R. OSTRAGER,
23 Justice

24 A P P E A R A N C E S:

25 STATE OF NEW YORK
26 OFFICE OF THE ATTORNEY GENERAL
ERIC T. SCHNEIDERMAN
Attorneys for the Petitioner
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New York, New York 10271

BY: MANISHA M. SHETH, ESQ.
JONATHAN C. ZWEIG, ESQ.
KATHERINE C. MILGRAM, ESQ.

-appearances continued on following page-

AB

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THE COURT: Presently before the Court is a discovery dispute relating to the compliance by Exxon with the subpoena issued by the New York Attorney General. And in a letter dated December 1, 2016, the Office of the Attorney General requested the Court to order Exxon to, one; insure "all sources of discoverable information identified in search" including adding document custodians, supplemental search terms and searching shared folders and data bases. Two; address the deficiencies identified by OAG as outlined above. Three; complete its production by January 31, 2017, a schedule that was set forth in footnote one, with weekly rolling productions followed by privileged logs for each production two weeks later. Four; produce un-redacted copies of documents previously redacted on responsive grounds.

Now, in response to the December 1st letter, Exxon notes that it's produced 1.4 million pages of responsive documents, its committed to producing all documents it undertook to produce, based on the stipulated search terms from the custodians previously identified no later than January 31, 2017, and that it's going to complete production of documents responsive to a number of the requests by December 31, 2016. And Exxon and the New York A.G. have agreed that no further production is required regarding the requests 1, 2, 6 and 7.

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2 Now, with respect to the New York A.G.'s request
3 that Exxon make rolling productions weekly followed by
4 privileged logs for each production two weeks later, that
5 hasn't been the practice of the parties for the year long
6 period, during which the document production has been
7 ongoing and I think that's an unreasonable burden to impose
8 on Exxon, although perhaps the parties can agree to
9 something other than quarterly productions of privileged
10 logs.

11 I'll hear from the New York A.G., but the
12 December 1st letter doesn't identify the additional document
13 custodians that the New York A.G. wants to have documents
14 search from. The New York A.G. hasn't indicated what
15 additional search terms it wants Exxon to utilize and Exxon
16 claims that it's already searching shared folders and data
17 bases, so short of having a hearing with witnesses with
18 respect to what Exxon is doing and it's agreed to meet and
19 confer process, I need to understand what it is that the
20 Court can order at this point in time.

21 MS. SHETH: Thank you, Your Honor.

22 Your Honor, I think what would be helpful is we
23 prepared a presentation for the Court that will help the
24 Court understand what is deficient about Exxon's production,
25 both from a substantive document and categories of document
26 perspective, but also with regard to the process. And with

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2 regard to Your Honor's last question with regard to the
3 relief we're seeking, we plan to address that as well. So
4 if I may hand up a copy of the presentation, and we have
5 copies for counsel, as well.

6 THE COURT: All right.

7 MS. SHETH: Now, Your Honor, I think the question
8 before the Court is why is what Exxon is doing unreasonable.
9 All right, they're telling the Court we've made a reasonable
10 production of documents, what is the A.G. complaining about;
11 and let me address that.

12 First, we had identified for Exxon and its counsel,
13 specific categories of documents that are missing or
14 incomplete in Exxon's production. And if Your Honor turns
15 to slide one of our presentation, we have listed these nine
16 categories of documents and they're outlined in our letter
17 of December 1st, to Your Honor. These are categories that
18 are missing and incomplete from Exxon's production.

19 Now, rather than going back to their client and
20 finding these categories of documents, Exxon has simply said
21 we are not going to address these deficiencies until after
22 our production is complete, so, New York A.G., wait until
23 the end of December, wait until the end of January and then
24 we'll go and try to find these documents. That is not
25 appropriate.

26 Second; Exxon has attempted to shift the burden of

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finding all sources of responsive documents to the A.G. and that is what they have done by saying, New York A.G., you identify additional custodians, you identify supplemental search terms, you tell us where these documents are. We can't do that. Exxon has the best knowledge about where these documents reside in the company, whether they're aware of shared drives or with document custodians and what specific language and terms are used within the company to capture these concepts.

THE COURT: I completely understand that, but the problem that I am having is that as a result of extensive negotiations, which culminated a year ago, an agreement was reached with respect to search terms and an agreement was apparently reached with respect to custodians and unless you tell me otherwise, it's my understanding from the correspondence that Exxon is producing documents predicated on search terms that were stipulated to a year ago and custodians that were identified and agreed to a year ago.

Now, if there are additional custodians that the A.G. has identified from its review of the 1.4 million documents that had been produced and New York A.G. can identify from that review of that volume of documents specific individuals who, whose files should be searched, I believe that Exxon will agree to add those custodians to its production and I believe that Exxon will have the production

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2 from those additional custodians made available in the
3 timeframe that you're requesting.

4 Is that correct, Mr. Wells?

5 MR. TOAL: Your Honor, during the meet and confer
6 process we invited the A.G.'s Office to identify additional
7 custodians they thought were necessary for reasonable
8 production. We've already produced from the custodians we
9 think are reasonable production. Obviously we've given them
10 the benefit of these 1.4 million pages of documents which
11 give them a basis to identify additional custodians. In the
12 meet and confer they refused to identify additional
13 custodians; they said that's not our job, that is your job.
14 So in this presentation for the first time we're seeing
15 identification of additional custodians.

16 MS. SHETH: Actually, Your Honor, I do want to
17 correct one point, and that is about the search terms and
18 custodians which Your Honor specifically asked about.

19 The search terms that were agreed to were a
20 preliminary set of search terms at the very beginning, so
21 literally one month after we got the subpoena before we had
22 the benefit of any documents, so once we started to get the
23 documents we saw that other terms were being used in the
24 documents that Exxon provided and we respectfully asked them
25 over the period from June to present for, you know, your
26 search terms that we initially ran before we had the benefit

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2 of a single one of your documents that are not capturing
3 what we expected.

4 And if Your Honor turns to slide four in our
5 presentation, we list specific reasons why we think that
6 preliminary search terms were not adequate. We have, for
7 example, just four custodians that we've identified that
8 have produced, where Exxon has produced relevant documents
9 anywhere between one and twenty-four documents. These are
10 highly relevant documents, exactly what we're looking for,
11 but we only have twenty-four documents, and that suggests
12 that there's a serious mismatch or improper use of the
13 search terms that were initially proposed by Exxon.

14 In addition, another example of why the search
15 terms that were initially proposed and agreed to at the
16 beginning are insufficient are because the number of reserve
17 and proxy reference documents are very small. If you look
18 at the second bullet point, now they keep talking about
19 1.4 million pages, that's only 20,000 documents, and out of
20 those 20,000 documents we only have slightly more than 1,100
21 documents that pertain to reserves. So there is something
22 that is inadequate about the search terms that they have
23 identified.

24 We have repeatedly asked them, can you supplement
25 these search terms and they have refused to do so until the
26 very last meet and confer where they said we are agreeing to

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2 add one -- familiar terms and that term is proxy cost but we
3 will only do that if you agree you're not going to
4 supplement with any additional search terms. Now we can't
5 agree to that.

6 THE COURT: Given the size of Exxon and the
7 potentially available universe of documents which could be,
8 what is a magnitude more than the 1.4 million pages that
9 Exxon has produced, a Court can't invent search terms and a
10 Court can't identify custodians.

11 It seems to me that it's incumbent upon the
12 New York Attorney General, after receiving 1.4 million pages
13 of documents over the last year to propose additional search
14 terms and different custodians based on the review of the
15 documents that you already have. And if you do propose
16 additional search terms and additional custodians and Exxon
17 refuses to comply that's something that the Court can rule
18 upon, but what the Court can't do is independently identify
19 search terms for you or independently identify custodians
20 that Exxon should have a document search from.

21 MS. SHETH: I agree with Your Honor, obviously we
22 can't ask the Court to do that and we wouldn't expect the
23 Court to do that. What we're saying is we've identified
24 where the deficiencies are and let Exxon make the initial
25 proposal, let them tell us who are the custodians and places
26 where these documents reside because what they have given us

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is a list of 368 potential custodians that they put on the litigation hold and they have produced from 56 of those custodians. We can't look at that list of the remaining 300 plus custodians and figure out who has the documents that are missing and incomplete from the production.

So what I would propose, respectfully, is that Exxon tell us who are the custodians that have the documents that are missing which we've identified for them, and if they tell us that then we can certainly have a back and forth about whether or not those are the right people, but to put the burden on us to find those people from the list of 38 puts us in a position where we're guessing. We know the documents of search terms are not pulling up the precise documents, but we can't tell them where the documents reside in the company.

MR. TOAL: This is all based on falsity. They pointed to three areas of supposed gaps. One is proxy costs; we've already produced 1,200 documents related to proxy costs even when it was not a search term. We also agreed to supplement our search term with the term proxy cost and we'll produce them from three additional custodians that we think are likely to have documents relating to proxy costs. So we're going to produce all those documents by the end of the year. That's not a gap in the production.

With respect to reserve documents, again there's no

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gap in the production. We've explained for a long time that reserves have nothing to do with climate change.

Reserves --

THE COURT: I read your letter, I understand your argument, there.

MR. TOAL: And Your Honor, as I said and as you recognize, we have searched, we have searched all the places we think are reasonably likely to have responsive documents and in the meet and confer we said if you think we missed something, if you think there's a custodian we didn't search that is likely to have responsive documents tell us who that is and we can have discussions. And with respect to search terms, we think our existing search terms are adequate. We didn't think we need to search for proxy costs, but we agreed to do it anyway and we said if you think there are missing search terms, tells us what they are and we can have a discussion. And the A.G.'s office was unwilling to have that discussion.

THE COURT: Look, I want to be helpful to the parties and to the process, but it really does seem to me that if you have 1,200 documents relating to a specific subject and those documents are to and from particular people, and undoubtedly cc many other people that New York Attorney General, looking at those 1,200 documents and looking at the recurrence of the names that appear on those

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1,200 documents can say these four, six, eight or twelve people whose names appear on repeated occasions in these 1,200 documents are custodians whose documents we want to see. And if you do that and you say to the Court we have a reasonable basis to believe based on our review of these 1,200 documents that these four, six or eight additional custodians are custodians whose documents should be produced, you know, I'll say that makes sense to me.

Similarly, if you look at the 1,200 documents and you see a particular term that's not a search term that you think would produce relevant and pertinent material I would order that Exxon add that to the list of search terms, but this concept that they know what you're looking for, I don't think is fair.

MS. SHETH: Your Honor, I don't want to give the Court the impression that we're not willing to do the work, because we are, and we have done the work. For example, with your last suggestion on proxy cost we did send them a letter, I believe it was October or November of this year where we said what you've pulled with regard to proxy cost is insufficient, 1,400 documents out of a universe of 20,000 documents, clearly, something is missing. And we either proposed --we didn't say, run this particular search term, but we gave them terms that we saw in the documents and we said we're seeing these kinds of words, maybe you want to

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2 run these terms. We can't tell you, but here is what we're
3 seeing, can you go find the correct documents, can you fill
4 out what's missing.

5 And I want to give Your Honor a better sense of
6 what's missing because, you know, with regard to proxy cost
7 what we don't have, what we have seen in the production is
8 internal policies and procedures that show how Exxon is
9 applying the proxy cost to its projects, the actual
10 application of the proxy cost to specific oil and gas
11 projects, the effect of the proxy cost on the evaluation and
12 reporting of its gas assets and probably most significantly,
13 its CEO's own statement that Exxon's projects are either too
14 short term or too large for the cost of carbon, meaning the
15 proxy cost, to effect the decision-making. So we haven't
16 seen the documents that support the representations that
17 Exxon has made to the public and to the investors.

18 So what we have seen in documents is one side of
19 the coin. We've seen the documents, actually more than half
20 of their production relates to documents from scientists
21 that talk about climate change as a scientific principle and
22 we've seen the documents that reveal what the representation
23 that Exxon has made about the effect of climate change on
24 its business and its financial reporting, but we haven't
25 seen the other side of the coin, which is what are the
26 documents that support what Exxon has told the public and

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investors? What are the documents that show the facts and the assumptions that Exxon considered and relied on in making those statements? And we need those document to test the accuracy of Exxon's own statements, and that's what's missing. And we're happy to do the work to try to identify additional custodians and additional search terms, but what I'm concerned with is that we will be back here in front of Your Honor because we will have suggested wrong custodians, because we have such a limited universe of document to base our review on 1,400 out of 200,000.

And I think another point --well, actually, on reserves I do want to address Mr. Toal's point about reserves, that when he says that reserves are-- let me make sure-- in their letter they say: "Reserves are a topic that has no connection to climate change." And I find that to be a very troubling statement and I'll tell you why.

If I could hand up to Your Honor a copy of the report called Managing the Risks, and this is a report that-- if you can hand that up, thank you.

(Handing.)

MS. SHETH: And Your Honor, this is a publicly available report that Exxon made various disclosures regarding the effect of the climate change on its business.

Now, if Your Honor looks at page 1 of the report, the third paragraph, they say: "Based on this analysis we

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are confident that none of our hydrocarbon reserves are now or will become stranded." So they're specifically talking about reserves.

Second, if you look at page --

THE COURT: Let me understand your point today. As I understand it, Exxon's position is that none of its hydrocarbon reserves are now or will become stranded means that nothing relating to climate change will affect its reserves.

MS. SHETH: That's correct. So, if you look at page 8, they make the statement again. They say: "A concern --" this is this the top paragraph of page 8, last sentence. "A concern expressed by some of our stakeholders is whether such a "low carbon scenario" could impact Exxon Mobil's reserves and operations-i.e., whether this would result in unburnable proved reserves of oil and natural gas."

So we need to be able to test the accuracy of that statement. Exxon is is telling the public and investors, don't worry about climate change, don't worry about climate change regulation, it is not going to affect our business operations and it is not going to affect our oil and natural gas reserves. We need the documents that will allow us to test whether that representation is in fact accurate.

THE COURT: So what specific documents are you

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1
2 talking about?

3 MS. SHETH: So what we're talking about, the
4 categories are outlined of bottom of page 1. We're talking
5 about the documents that will discuss the impact of climate
6 change and climate change reservation on reserves, on the
7 reserve replacement ratio, and the likelihood that the
8 reserves will be impaired or stranded, the rate at which
9 reserves will be utilized and the likelihood of low carbon
10 emission scenarios.

11 THE COURT: You just outlined a half a dozen
12 potential search terms that you can give to Exxon and which
13 I would ask Exxon to utilize.

14 That's the point of what I'm trying to get across,
15 here, which is if you have search terms that you want to add
16 and they're reasonable, based on everything that you have
17 done for the last year the Court would order them produced.
18 And frankly, I think Exxon would agree to add them at a meet
19 and confer without the Court's intervention.

20 MS. SHETH: Okay, we've tried that in the past and
21 we'll try that again, Your Honor.

22 We will try again and we will do it expeditiously
23 because we do want these documents by the end of January.

24 THE COURT: Well it seems to me we have a record
25 here. You just articulated a half a dozen search terms
26 which may or may not be search terms that Exxon has

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previously utilized.

I'm satisfied, based on what you presented to the Court, that those terms are reasonable for Exxon to add to search terms that its using and you should just send Exxon an e-mail or a letter listing those half a dozen search terms and it would be the order of the Court that those should be added to the search that's being made of the 56 custodians that have previously been agreed upon. And if there are additional custodians that you've identified based on the review of the 1.4 million pages of documents that Exxon has produced those will be added, as well. And it seems to me that Exxon has the resources to add those additional custodians and add those additional search terms without affecting the January 31st deadline.

Now, with respect to this business of having privileged logs produced every two weeks, that's just unreasonable.

MS. SHETH: Thank you, Your Honor, we will do that. We will expeditiously provide them with a supplemental list of custodians and supplemental list of search terms.

And if I could address just one other point, Your Honor.

THE COURT: Let me just make sure that Exxon is agreeable to this.

MR. TOAL: So, I would just say a few things. I

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2 think we have a set of search terms that it was agreed upon
3 and it was negotiated.

4 THE COURT: I understand.

5 MR. TOAL: So I think those are reasonable terms to
6 accomplish the task of trying to come --

7 THE COURT: The New York Attorney General has
8 indicated there are these additional search terms that the
9 New York Attorney General deems to be relevant based on its
10 evolving review of the documents and it doesn't seem to me
11 to be extraordinarily onerous to add the four or five
12 additional specific search terms that counsel has
13 articulated, and if there are a couple of, three or four
14 custodians that the New York Attorney General has
15 identified, it doesn't seem to me to be onerous for you to
16 add those.

17 The burden of your letter to the Court was that the
18 New York Attorney General wasn't telling you what it was
19 they wanted you to search or whose files they wanted you to
20 search. Now we've convened here with a large audience, the
21 New York Attorney General has identified a handful of
22 additional search terms and is proposing to add a handful of
23 additional custodians. I would have thought that could have
24 been agreed upon at a meet and confer but it wasn't, so --

25 MR. TOAL: So Your Honor, I would say a few things.
26 If we're talking about a handful of search terms and they're

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not their terms that are likely to capture documents that the existing search terms wouldn't have caught and they're reasonable and responsive to the subpoena, that obviously is something we've been willing to talk about from the beginning. If we're talking about a few additional custodians and there's a reasonable likelihood to believe they have responsive documents, that is something we can talk about if there is reasonable documents in that the existing custodians wouldn't have produced that we can talk about.

The January 31st deadline was predicated on the custodians that were specifically identified in the search terms that were specifically identified and if we do have to go back and collect data from additional custodians, load that data, run search terms, that will take additional time and we don't know how much additional time until we know how many of those documents hit on the search terms. So that's the only proviso that I would add, Your Honor, is that we really can't predict what the volume is going to be, how many documents will hit on the search terms. Once we know that we can make reliable predictions about how long it will take us to review those documents.

MR. WELLS: Your Honor, if I could just add, in terms of what I'll call a big picture answer we'll get done what you just said. If we're talking about a handful of new

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2 search terms, whatever they are, we'll run them, okay.

3 With respect to the handful of custodians, we will
4 take care of that and do our best to meet the end of the
5 month deadline, if possible.

6 The search terms are different from the custodians.
7 What's different is that with the existing custodians
8 they're now in the data base. So they give us handful of
9 new search terms we can run it, okay. The custodians, if
10 they're new names, what has to happen is more time-consuming
11 in the sense we've got to go out to that person's office.

12 THE COURT: You have to upload the document. I've
13 been there done this, so I understand exactly what we're
14 talking about. And it's my belief that if the parties both
15 behave reasonably and responsibly, adding a handful of
16 additional search terms and a handful of additional
17 custodians shouldn't be an insuperable barrier to production
18 of all of the documents by January 31st.

19 MR. WELLS: I agree, Your Honor.

20 MS. SHETH: Thank you, Your Honor.

21 One last point, and this goes to Mr. Wells's point
22 about the custodians. I just want to be clear about the
23 shared drives, and I know Your Honor is well familiar with
24 shared drives. I like to think of them as an electronic
25 filing cabinet where, you know, the entire filing cabinet a
26 particular department or group of individuals at the company

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2 has access to that cabinet. They can pull it out and within
3 the cabinets are folders and they're organized by either
4 topic or sometimes by person.

5 Now, Exxon is telling the Court it has searched
6 those shared drives, but I think what Exxon has done, based
7 on my understanding of the correspondence, is that they have
8 searched the folders within this cabinet that relate to the
9 56 custodians. What they haven't searched are the topical
10 folders. And I have a nice document from Exxon's own
11 production, which if I may hand it up, will show what I'm
12 talking about, here.

13 So, we were lucky in that we coincidentally found
14 this in Exxon's production, it's on a topic that really is
15 not relevant to this investigation but Exxon happened to
16 produce this document which pertains to something relating
17 to water resource management. But what this document shows
18 is this, a screen shot of the shared drive system or one of
19 the shared drive systems in place at Exxon. And if you look
20 at the right --sorry, the left hand corner, it says Document
21 Resource Library, and at the bottom, you see a bunch of
22 documents; some look like word documents, some appear to be
23 power point documents. But these are documents that are
24 within this folder called Water Resources.

25 Now, we had asked Exxon repeatedly, can you please
26 search these shared drives. And if you look at page 3 of

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our dec we've even identified the specific shared drives that we've identified based on their document production. We said, rather than look for the folder of custodians, please look for the topical folder. For example, look at the folder that pertains to greenhouse gases, look at the folder that pertains to oil and gas project approvals which does have documents concerning the application of the proxy cost and they have refused to do that. So I would ask Your Honor that in addition to us identifying additional supplemental custodians and search terms, that Exxon also search these shared drives and the specific topical folder in the shared drives.

And the one other area is data bases. We have not seen any documents in their production that come from data bases and we know based on a review of the documents there are data bases for example the flex data base which contains emissions and environmental data, so we would ask that they also search those the January 31st deadline.

THE COURT: Well, let me ask a very practical question. Is it contemplated that there are going to be depositions in this proceeding?

MS. SHETH: Yes, Your Honor, I think that that's a fair assumption.

THE COURT: What I think is that the search terms that you give to Exxon, supplemental search terms will

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2 capture what you're looking for.

3 MS. SHETH: Only if they run them in the shared
4 drives. If they're just running them on custodians we may
5 not get these shared drive documents. That's my
6 understanding of how it works.

7 THE COURT: You've represented they have run the
8 search terms on shared drives, that's what they have
9 represented.

10 MS. SHETH: I would ask for a clarification from
11 counsel. Are they running the search terms on the topical
12 shared drive folder?

13 MR. TOAL: We have asked custodians, we've
14 interviewed custodians, we've asked them where they store
15 documents, we asked them if they store documents on shared
16 drives. They indicated they stored documents on the shared
17 drives that are reasonably likely to be responsive to the
18 subpoena. We searched the shared drive.

19 THE COURT: Okay, it seems to me that, you know,
20 it's unreasonable for Exxon to deliver to the New York
21 Attorney General's Office every document that Exxon has in
22 its possession and it seems to me that when you commence the
23 deposition process it will become very apparent if there are
24 any gaps in the document production, and you're just
25 throwing darts against the wall, here.

26 If you give them, as part of the supplemental

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2 search terms, some of the terms that are, that appear on
3 page 3 and they run those through the shared drives, which
4 they have represented that they're doing, you're going to
5 get pretty close to the universe of what you need and what
6 you want.

7 MS. SHETH: I agree with Your Honor, if that's what
8 they're doing, if they're willing to run our search terms on
9 the shared drives then, yes, you're absolutely right, we
10 will get what we're asking go for and looking for. I don't
11 interpret what Mr. Toal said to be doing that. I think
12 what he's saying is we're only going to look in a particular
13 shared drive because the custodians said I put my documents
14 in the shared drive.

15 So what that means is, let's say we have the search
16 shared climate change, if I am one of their custodians I
17 mention that drive, they're not running searches in that
18 drive but meanwhile, based on the folder name we know there
19 are documents in a shared drive, that's the climate change
20 implementation shared drive. So we're asking to search that
21 drive using the search terms, and if they're willing to do
22 that, that's perfect.

23 MR. TOAL: So we're aware of our obligation to
24 search for documents in places that they're reasonably
25 likely to be found. I can't address all the specific shared
26 drives now because they were raised for the first time right

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2 now. This is really what should have happened during the
3 meet and confer. The A.G. was not willing to engage on
4 these topics so I can only talk generally.

5 We are aware of our obligation to search for
6 documents where they're reasonably likely to be found and
7 we'll continue to do that.

8 MS. SHETH: And I would submit that the documents
9 relating to climate change are reasonably likely to be found
10 in the shared drives with these names.

11 THE COURT: Counsel is attempting to be responsive
12 to your concerns and I think we've accomplished all we can
13 accomplish this morning. If it turns out that you believe
14 that there isn't good faith compliance with what we've
15 agreed upon and discussed this morning then you come back
16 here and we'll drill down deeper than we've drilled today,
17 but it seems to me that they have agreed to produce by
18 January 31st, documents captured by additional search terms.
19 They have agreed to produce by January 31st documents from
20 additional custodians and they have agreed, to the extent
21 the search terms are reasonably likely to produce documents
22 from shared drives, they will produce them. That's by order
23 of the Court.

24 And if there is any further issues you will
25 initiate additional conferences in early January.

26 MS. SHETH: Thank you, Your Honor, we really

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1
2 appreciate your time and your patience and we will do that,
3 we'll work expeditiously starting as soon as Monday or even
4 this afternoon to get that done. And I would ask Your Honor
5 that if we could keep the December 15th pre-existing
6 conference on the calendar so that if we do have disputes
7 about what's a reasonable handful of custodians and search
8 terms that we may revisit that issue with Your Honor.

9 MR. WELLS: I was going to ask just the opposite,
10 Your Honor. The December 15th date was set with respect to
11 the climate. We reached a stipulation, we don't have any
12 dispute, we have a schedule and that's all in place, so that
13 was the purpose of the December 15th date.

14 THE COURT: I understand and I agree.

15 MR. WELLS: And so, since -- so I would ask that
16 we not be --not have to hold this date. People have to fly
17 here from Texas and make plans and there's no reason, as
18 Your Honor has indicated it looks like if there's a problem
19 they can write a letter and you call us in on short notice
20 and we appear and that's worked out so far fine with
21 everybody, so I would ask that we adjourn the December 15th
22 date and if we have to get back here whenever, we will.

23 THE COURT: I agree with that. The December 15th
24 date relating to the PWC issues, and I signed the
25 stipulation yesterday memorializing your agreement as
26 respects the PWC documents, so there's no reason to come

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2 back here on December 15th, but, if things go awry in
3 connection with what we've discussed this morning you'll
4 apprise me by letter and if you have to come back next week
5 or the week after we'll do that. But it seems to me that
6 there's been a meeting of the minds, here, and let's hope
7 that things move smoothly and cooperatively.

8 MS. SHETH: Thank you, Your Honor.

9 I think there is one issue that's still pending and
10 that pertains to the redactions of --the redactions for
11 responsiveness. So we had asked in our letter --well, we
12 submitted in our letter that those redactions are improper.
13 Exxon is only permitted to redact on the basis of privilege
14 or work product and instead we have received documents that
15 are responsive but have been redacted oftentimes in the
16 entirety. So we've got multiple documents where the entire
17 document, but for one line, has been redacted for
18 responsiveness reasons. So we would respectfully ask those
19 documents be produced immediately.

20 THE COURT: I'm not prepared to order that at this
21 point in time. That's something that would have to be fully
22 briefed by both parties. And if you want to submit within
23 ten days simultaneous briefs on that issue, I will address
24 it.

25 MS. SHETH: Thank you, Your Honor.

26 MR. TOAL: Your Honor, I would say on the redaction

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point, we have agreed to go back and re-review all of our redactions for responsiveness and limit our redactions to issues regarding sensitive and private information which even the A.G. says is an appropriate reaction.

THE COURT: That's among the reasons why I'm not prepared to order anything today.

MR. TOAL: Thank you, Your Honor.

THE COURT: Okay. Thank you. You will order the transcript.

C E R T I F I C A T E

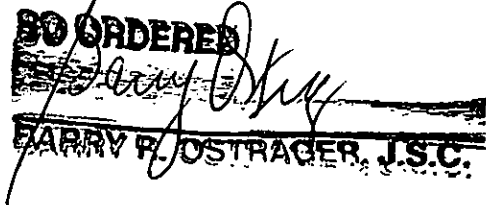
It is hereby certified that the foregoing is a true and accurate transcript of the proceedings.



ANGELA BONELLO

SENIOR COURT REPORTER

SUPREME COURT-NEW YORK COUNTY

SO ORDERED

HARRY R. OSTRAGER, J.S.C.

12/15/16

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